IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

RFA No. 156 of 2003 alongwith RFAs No. 220/2003, 11/2004, 129/2004, 130/2004, 162/2004, 163/2004, 164/2004, 199/2004, 200/2004, 201/2004 202/2004, 203/2004, 204/2004, 238/2004, 350/2004, 2/2005, 91/2005

Reserved on : 1st August, 2007.

Date of Decision: 20th August,2007

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1. RFA No.156 of 2003		
Dinesh Chhetry	vs.	State of H.P. and ors.
2. RFA No. 220 of 2003		
Kaushalya and ors.	vs.	State of H.P. and ors.
3. RFA No. 11 of 2004		
State of H.P. and others	vs.	Dinesh Chhetry
4. RFA No.129 of 2004		
State of H.P. & ors	vs.	Kaushalya & ors.
5. RFA No. 130 of 2004		
State of H.P. & ors.	vs.	Shiv Kumar & ors.
6. RFA No. 162 of 2004		
LAC & others	vs.	Prem Parkash
7. RFA No. 163 of 2004		
LAC & others	vs.	Prem Parkash
8. RFA No.164 of 2004		
LAC & others	vs.	Dhani Singh & ors.
9. RFA No.199 of 2004		
LAC & others	vs.	Gulab Singh
10. RFA No. 200 of 2004		
LAC & others	vs.	Lekh Ram and others
11. RFA No. 201 of 2004		
LAC & others	vs.	Dev Dutt (now deceased)
12. RFA No.202 of 2004		through LRs.
LAC & others	vs.	Gopal Singh & others
13. RFA No.203 of 2004		
LAC & others	vs.	Bhagita
14. RFA No.204 of 2004		
LAC & others	vs.	Hasiya & others
15. RFA No.238 of 2004		
LAC & others	vs.	Mohan Singh & others
16. RFA No.350 of 2004		
LAC & others	vs.	Shyam Singh & others
17. RFA No. 2 of 2005		
LAC & others	vs.	Sohan Singh & others
18. RFA No. 91 of 2005		
LAC & others	vs.	Hari Saran & others

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

RFAs No. 156/2003, 220/2003

For the appellants: Mr.Ramakant Sharma, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General, with Mr. C.B.Singh, Dy. Advocate General

RFAs No.11/2004, 129/2004, 162/2004, 163/2004, 164/2004, 199/2004, 200/2004, 201/2004, 202/2004, 203/2004, 204/2004, , 350/2004, 2/2005, 91/2005

For the appellants: Mr.M.S.Chandel, Advocate General, with Mr. C.B.Singh, Dy. Advocate General.

For the respondents: Mr. Ramakant Sharma, Advocate

RFAs No. 130/2004, 238/2004

For the appellants: Mr.M.S.Chandel, Advocate General, with Mr. C.B.Singh, Dy. Advocate General.

Mr. G.D.Verma, Sr. Advocate, with Mr. B.C.Verma, Advocate.

Sanjay Karol, J.

All the above appeals are being disposed of by a common judgment, as these pertain to acquisition of land acquired for the public purpose i.e. for construction of Kumarhatti – Oachghat road and the issue involved in the appeals is common. For ready reference, details of appeal, parties name and reference Petition No. are given hereinbelow:-

Sl. No.	*RFA No.*	*Title*	*Reference Petition No.*
1.	*156/ 2003*	*Dinesh Chhetry vs. State of H.P. & ors.*	*7-S/4 of 2001*
2.	*220/2003*	*Kaushalya and ors. vs. State of H.P. & ors*	*8-S/4 of 2001*
3.	*11/2004*	*State of H.P. & ors. vs. Dinesh Chhetry*	*7-S/4 of 2001*
4.	*129/2004*	*State of H.P. & ors vs. Kaushalya & ors.*	*8-S/4 of 2001*
5.	*130/2004*	*State of H.P. & ors. vs. Shiv Kumar & ors.*	*1-S/4 of 2001*
6.	*162/2004*	*LAC & others vs. Prem Parkash*	*46-S/4 of 2001*
7.	*163/2004*	*LAC & others vs. Prem Parkash*	*47-S/4 of 2001*
8.	*164/2004*	*LAC & others vs. Dhani Singh & ors.*	*40-S/4 of 2001*
9.	*199/2004*	*LAC & others vs. Gulab Singh*	*12-S/4 of 2001*
10.	*200/2004*	*LAC & others vs. Lekh Ram and ors.*	*16-S/4 of 2001*
11.	*201/2004*	*LAC & others vs. Dev Dutt (now deceased) through LRs.*	*13-S/4 of 2001*
12.	*202/2004*	*LAC & others vs. Gopal Singh & ors.*	*7-S/4 of 2000*
13.	*203/2004*	*LAC & others vs. Bhagtia*	*8A-S/4 of 2000*
14.	*204/2004*	*LAC & others vs. Hasiya & ors.*	*8-S/4 of 2000*

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

15.	*238/2004*	*LAC & others vs. Mohan Singh & ors.*	*15-S/4 of 2002*
16.	*350/2004*	*LAC & others vs. Shyam Singh & ors.*	*15-S/4 of 2001*
17.	*2/2005*	*LAC & others vs. Shakroo since deceased (now Sohan Lal and others)*	*14-S/4 of 2001*
18.	*91/2005*	*LAC & others vs. Hari Saran & ors.*	*11-S/4 of 2001*

All the appeals except RFAs No. 156 and 220 of 2003, have been filed by the State of Himachal Pradesh, to challenge the enhancement of the market price/compensation of the acquired land awarded by the District Judge. However, by way of appeals being RFAs No. 156 and 220 of 2003 the claimants have challenged the awards passed by District Judge and prayed for enhancement of compensation. The Reference Petitions were decided by the District Judge in terms of the impugned award as under:-

Sl. No.	RFA No.	Date of Award	Amount awarded (Per Bigha)
1.	156/ 2003	17.4.2003	Rs.1,33,330/-
2.	220/2003	17.4.2003	Rs.1,33,330/-
3.	11/2004	17.4.2003	Rs.1,33,330/-
4.	129/2004	17.4.2003	Rs.1,33,330/-
5.	130/2004	22.9.2003	Rs.1,33,330/-
6.	162/2004	26.5.2003	Rs.1,50,000/-
7.	163/2004	26.5.2003	Rs.1,50,000/-
8.	164/2004	26.5.2003	Rs.1,50,000/-
9.	199/2004	26.5.2003	Rs.1,50,000/-
10.	200/2004	26.5.2003	Rs.1,50,000/-
11.	201/2004	26.5.2003	Rs.1,50,000/-
12.	202/2004	26.5.2003	Rs.1,50,000/-
13.	203/2004	26.5.2003	Rs.1,50,000/-
14.	204/2004	26.5.2003	Rs.1,50,000/-
15.	238/2004	13.8.2003	Rs.1,33,330/-
16.	350/2004	26.5.2003	Rs.1,50,000/-
17.	2/2005	26.5.2003	Rs.1,50,000/-
18.	91/2005	26.5.2003	Rs.1,50,000/-

For the public purpose, namely, construction of Kumarhatti – Oachghat road, the appellant State issued Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) intending to acquire 234-16 Bighas of land situate in Village Kotla, Tehsil and District Solan, H.P.

Different parcels of land of the claimants herein were acquired in terms of the provisions of the Act and finally after holding the

inquiry the Land Acquisition Collector determined the market price of the acquired land as under:-

Award No. and date	Village	Classification	Rate per bigha
31/ 2000	Diur	Bangar Abal	Rs.1,33,333-20
13.6.2000		Bangar Doyam	Rs. 88,895-00
		Bangar Soyam	Rs. 45,238.00
30/2000	Kotla	Banjar Kadeem	Rs. 21,428-55
18.6.2000		Banger Ghasni	Rs. 7,142.00
4/97	Dhillon	Kuhal	Rs.14,656-00
10.4.1997		Kuhal Awal	Rs.12,300-00
		Banger Awal	Rs. 7,320-00
		Banger Doem	Rs. 4,842-00
		Ghasni	Rs. 500-00
		Banjar Kadim and other Gair Mumkin	Rs. 500-00

Aggrieved by the awards of the Collector, the claimants filed Reference Petitions under Section 18 of the Act. In order to prove their case, the claimants examined witnesses in their respective claim petitions and got exhibited documents on record including sale deeds and certain awards passed by the District Judge in relation to land acquired for the same public purpose of the adjoining villages. In the reference petitions, the Court below has relied upon the sale deeds and/or the awards passed by the Collector for determining the compensation, which is determinative of a just and fair market value of the acquired land.

In RFAs No. 156/2003, 220/2003, 11/2004 and 129/2004, decided by common award dated 17th April, 2003, the Court has referred to the following sale deeds:-

Ext.	Date of execution	Area & nature of land involved	Rate per Bigha
P1	23.10.1997	4 biswas (nature not disclosed)	Rs.1,50,000/-
P2	22.5.1998	1 bigha	Rs.1,50,000/-
P3	11.6.1998	2 biswas(Bangar Awal) in Mauja Runam-Ghron	Rs.1,60,000/-

P-4	17.2.1998	4 biswas at Mauja Barog	Rs.1,55,000/-
P-5	13.10.1998	11 biswas in Mauja Barog	Rs.1,50,000/-

The aforesaid sale deeds, however, not been relied upon and the award has been passed on the basis of the evidence which has come on record with regard to potentiality and the proximity of the acquired land with the land National Highway and for which Collector has already been assessed the compensation at Rs.1,33,330/- per Bigha (the best quality of land). The Court below has relied upon the statements of PW-1 Dinesh Kumar, PW-2 Smt. Alka, PW-3, Daya Ram, PW-4 Satya Pal and PW-5 Bimal Kumar to come to its finding.

In RFAs No. 162, 163 and 164 of 2004 decided by common award dated 26th May, 2003, the Court has referred to the following sale deeds:-

Ext.	Date of execution	Area & nature of land involved	Rate per Bigha
P-1	9.9.94	5 Biswas Barog	Rs.73,000/-
PW-3/A	12.4.94	2 biswa	Rs.15,000/-

The Court below has relied upon sale deed Ex.PW-3/A and also the statements of PW-1 Dhani Ram, PW-2 Dhayan Singh and PW-3 Roop Lal and has awarded a sum of Rs.1,50,000/- per Bigha. During the course of hearing, learned counsel for the respondents agreed that the award impugned in RFA No. 156 of 2003 should be made as the basis for deciding the present appeals for the reason that it has already come on record that the land is contiguous and in contiguity with the land, which is subject matter of RFA No.156 of 2003.

RFAs No. 199, 200, 201, 202, 203, 204, 350 of 2004, 2 and 91 of 2005 were decided by common award dated 26th May, 2003. The Court below has referred to sale deeds Ext. PW-4/A and Ext.PW-5/A as also the statements of PW-1 Bhagtia, PW-2 Sukh Ram, PW-3 Dhayan Singh, PW-4 Roop Lal, PW-5 Kirpa Ram, PW-6 R.C.Sharma, PW-7 Rishi Pal, PW-8 R.P.Swami and after relying upon sale deed Ext. PW-4/A has awarded a sum of Rs.1,50,000/- per Bigha. During the course of hearing, learned counsel for the respondents agreed that the award impugned in RFA No. 156 of 2003 should be made as the basis for deciding the present appeals for the reason that it has already come on record that the land is contiguous and in contiguity with the land, which is subject matter of RFA No.156 of 2003.

RFA No. 238 of 2004 was decided by award dated 13th August, 2003. The Court below has referred to the following sale deeds:-

i) Ex.PW-1/A sale deed dated 11.6.1998, whereby land measuring 0-02 bighas (Banger Awal) including Khalyan and Todda in revenue village Rundan-Gohoron, Pargana Bharoli Kalan was sold for a consideration of Rs.16,000/-.

ii) Ex.PW-1/B sale deed dated 13.10.1998 endorsing sale of 11 biswas situated in Mauja Barog, Tehsil and District Solan for a consideration of Rs.83,000/-.

iii) Ex.PW-1/C is sale deed dated 17.2.1998 in respect of sale of land measuring 4 biswas situated in Mauja Barog Pargana Bharoli Kalan, Tehsil and district Solan, HP for a consideration of Rs.31,000/- .

iv) Ex.PW-1/D is sale deed dated 22.5.98 with respect to land measuring 1 bigha for a consideration of Rs.50,000/- in village Barog, Tehsil and District Solan, HP;

v) Ex.PW-1/E is sale deed executed on 23.10.97 with respect of 4 biswas of land situated in Mauja Rundan-Gaorohon for a total consideration of Rs.30,000/-.

The aforesaid sale deeds, however, have not been relied upon and the award has been passed on the basis of the evidence which has come on record with regard to potentiality and the proximity of the acquired land with the land adjoining to the National Highway and for which Collector has assessed the compensation at Rs.1,33,330/- per Bigha (the best quality of land). The Court below has relied upon the statements of PW-1 Mohan Singh, PW-2 Roop Lal, PW-3 Puran, PW-4 Satya Pal and PW-5 Bimal Kumar to come to its finding.

RFA No. 130 of 2004 was decided by award dated 22nd September, 2003. The Court below has referred sale deeds Ex.PW-2/A, Ex.PW-3/A, Ex.PW-5/A, Ex.PW-6/1, Ex.PW-6/B, Ex.PW-6/C, Ex.PX, Mark 'C'. The said sale deeds, however, not been relied upon and the award has been passed on the basis of the evidence which has come on record with regard to potentiality and the proximity of the acquired land with the land adjoining to the National Highway and for which Collector has already assessed the compensation at Rs.1,33,330/- per Bigha (the best quality of land). The Court below has relied upon the statements of PW-1 Shiv Kumar, PW-2 smt. Kiran, PW-3 Daulat Ram, PW-4 Govind Ram, PW-5 Sankar Lal, Pw-6 Satya Pal, PW-7 Shiv Charan and PW-8 Satya Parkash to come to its finding.

The market value means the price that a willing purchaser would pay to the willing seller for a property having due regards to its existing condition, with all its existing advantages and its potential possibilities when laid out in the most advantageous manner excluding any advantage due to the carrying out of the public purpose for which property is compulsorily acquired.

The Apex Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another*, reported in AIR 1988 SC 1652, referred the following factors for determining the market value:-

> "4. The following factors must be etched on the mental screen:
>
> (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.
>
> (2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.
>
> (3) The Court has to treat the reference as an original proceeding before it determine the market value afresh on the basis of the material produced before it.
>
> (4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.
>
> (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under S.4 of the Land Acquisition Act (dates of Notifications under Ss. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under S.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instance method, the Court has to co-relate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land.).

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle

(ii) proximity from situation angle

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deducted by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deducted by loading the price reflected

in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:-

(for table see below)

	Plus factors		Minus factors
1.	Smallness of size	1.	Largeness of area.
2.	Proximity to a road	2.	situation in the interior at a distance from the road
3.	frontage on a road	3.	narrow strip of land with very small frontage compared to depth
4.	nearness to developed area	4.	lower level requiring the depressed portion to be filled up.
5.	regular shape	5.	remoteness from developed locality
6.	level vis-à-vis land under acquisition	6.	some special disadvantageous factor which would deter a purchaser.
7.	special value for an owner of an adjoining property to whom it may have some very special advantage.		

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. Cannot be compared with a large tract or block of land of say 10000 sq. yds. Or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the

invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

I have perused the statements of the witnesses in all the appeals. From the statement of the witnesses, it is evident that the land in question has potential value for commercial growth. In the radius of 2-5 kms. there is a school, a commercial complex, post office, railway station and other communication facilities. The acquired land is also at a distance of about 5 Kms. from the township of Kumarhatti, which is on National Highway No.22 and is also at the same distance from Barog, which is a famous tourist destination on the same National Highway. Therefore, it cannot be disputed that the acquired land has potential of growth and is capable of being put to commercial use. The lands are in continuity and have been acquired for the same public purpose.

The perusal of the awards would show that the Collector has not only awarded different rates for different categories of land but also

different rates for different villages. It has come on record that the lands acquired in all the villages in question are contiguous to each other and have all the advantages as enumerated hereinabove.

The learned Advocate General submitted that keeping in view the ratio of law laid down by this Court in LAC, Solan and another vs. Bhoop Ram, reported in 1997 (2) Sim.L.C. 229, the highest amount of compensation awarded by the Collector should be uniformly applied to all the landowners whose land stand acquired in terms of the awards in question and are subject matter of the present appeals regardless of classification of the land as the purpose of acquisition is same and similar. Therefore, according to him all the claimants in the present appeal whose land has been acquired for the construction of Kumarhatti – Oachghat road should be awarded Rs.1,33,333.20 or say Rs.1,33,330.00 per bigha. His submission is based on the fact that there is enough evidence on record to show that the acquired land in different villages are having the same advantage and potentiality of increase in value due to its location in and around the areas where the land is put to commercial use.

In *Bhoop Ram (supra),* this Court has held as under:-

> "The Land Acquisition Collector and the District Judge have determined the market value at a lesser rate for the acquired land, which was classified as Bangar Doem, Bangar Kadim, Ghasni, Charand and Gair Mumkin but in our view the classification of acquired land for the agricultural purpose is not relevant looking to the common purpose of acquisition for the construction of road and uniform rate of Rs.40 per sq. metre or Rs.30,000/- per Bigha should be awarded irrespective of the classification of the acquired land."

The aforesaid judgment has been consistently followed by the Court and in RFA No.2 of 1995, titled Phul Singh vs. LAC, this Court has

held that if the and has potential for setting up of industry, the whole of it, irrespective of the kind and class of the land can legitimately presumed to be same market value.

In my view, the submission of the learned Advocate General is extremely fair and totally in consonance with the principles of law laid down by the Apex Court.

Perusal of the some of the award shows that the Court below has already held that even if one category of the land is better than the other category for the agricultural purposes, however, in view of the probable further use of the land for the public purpose, the land of different categories would be deemed to be having similar potentiality and as such similar rate is required to be awarded uniformly irrespective of the category of land. In these cases, I am in agreement with the view taken by the Court below and do not find any infirmity in the decision so arrived. The amount offered by the Collector for the best value of the land i.e. Rs.1,33,330/-, therefore, is fair. Needless to add that I have not gone into the various exhibited sale deeds for determining the just, fair and reasonable market value of the acquired land in view of the submission made by the learned counsel for the parties at the Bar.

The learned Advocate General has brought to my notice the error in some of the impugned awards to the extent that the interest in terms of Section 28 has been awarded from the date of possession of the land, which is prior to the issuance of Notification under Section 4 of the Act. The submission is well founded keeping in view the ratio of law laid down by the Apex Court in *R.L.Jain (D) by LRs vs. DDA and others,* reported in (2004) 4 SCC 79. Therefore, in my view, the respondents-claimants shall be entitled to interest on the enhanced amount from the date of Notification under Section 4 of the Act instead of date of possession.

The claimants are also entitled to all the benefits in view of ratio of law laid down by the Apex Court in *Sunder v. Union of India,* reported in (2001) 7 SCC 211.

In view of foregoing reasons, all the appeals, except RFAs No. 156 and 220 of 2003, filed by the State of Himachal Pradesh are partly allowed and the awards of the learned District Judge are modified to the aforesaid extent. However, the appeals being RFAs No. 156 and 220 of 2003 filed by the claimants are disposed of. All the Misc. applications are also disposed of.

20th August, 2007
(C)

(Sanjay Karol),
Judge.